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EXAMINER

GRAYSAY, TAMARA L

ART UNIT PAPER NUMBER

3623

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,046

Applicant(s)

EITEL ET AL.

Examiner

Tamara L. Graysay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date (<u>1 page</u>). | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because of the following:
 - a. They fail to comply with 37 CFR 1.84(l) because every line (FIGS. 1 and 2) is not sufficiently dense and dark, and uniformly thick and well-defined.
 - b. They fail to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 24 and 26 (FIG. 1).
 - c. The drawings are objected to under 37 CFR 1.84(h)(5) because FIG. 1 show(s) modified forms of construction in the same view. As noted at page 3 {0012} the PSTN and Internet are alternative embodiments, and should be shown in different figures. A separate figure should be used to depict the alternative embodiment described at page 6 [0025] – [0026] for the entry of bill payment information because element 116 is not part of that embodiment.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

3. The disclosure is objected to because of the following informalities:

The use of acronyms is acceptable, however, each should be spelled out at least at its first occurrence (ANI and DNIS at page 3 [0013]).

Appropriate correction is required.

Claim Objections

4. A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

In the present application claims 17-19 are separated from claim 15 by claim 16 which does not also depend from claim 15. Similarly, claims 31-33 are separated from claim 29 by claim 30 which does not also depend from claim 29.

Applicant's sequence has not been changed.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-13 and 42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 1-13, the method of maintaining and improving an agent's performance level comprising the steps of providing a threshold (for each of a plurality of tasks); measuring performance of an agent (in each of the plurality of tasks); and training the agent (upon condition that the measurement exceeds a respective threshold) does not include a result that is useful, concrete, and tangible. Applicant has explained that the invention is useful for evaluating the performance of a telemarketing agent without direct monitoring. However, the claim does not include a positive recitation of the disclosed result. Namely, the practical application of indirect performance evaluation of a single agent in a complex automated call distributor is not included in the metes and bounds of the claims, i.e., the claims do not recite a method of indirect monitoring. The claims instead are directed to method of maintaining and improving an agent's performance, i.e., an idea of determining when an agent should be trained not what training achieves the claimed method of maintaining and improving an agent's performance level or the disclosed process of indirect monitoring for evaluating an agent's performance suggesting that the claim is not directed to the subject matter of applicant's invention. Therefore, the claims, given their broadest reasonable interpretation in light of the specification, do not result in or produce a practical application.

Regarding claim 42, the method of maintaining an agent's performance level comprising the steps of providing a reference parameter (for each of a plurality of tasks); measuring the parameter of an agent (in each of the plurality of tasks); comparing the measured parameter with the reference parameter (for a task); and scheduling (the agent's) training (on condition that the reference parameter has been exceeded by the measured parameter) is not a practical application that has a tangible result. Namely, the step of scheduling training is not training in a particular field but rather merely making an appointment, i.e., not tangible.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Doyle (article, Calling all trainers).

Regarding claim 1, the features of claim 1 are providing performance standards, measuring performance against those standards, and training when the standards are not met. Although the claim is silent as to the training, for this Office action, the training step has been interpreted as having content being related in some way to the task(s) training with the intent to improve performance of the task(s). Doyle discloses training for call center staff using standards and expectations for measuring performance (p.64, fifth through seventh paragraphs, measurement of staff performance against a standard by measuring everything and determining whether staff is performing as needed, monitoring each class of hired employees, looking for trends associated with performance of each class, identifying training needs quickly, and training, preferably individualized, using modules). Thus, Doyle taken as a whole is anticipatory of the broadly recited features of the claim.

Regarding claim 2, monitoring performance encompasses well-known benchmarking methods such as comparison of measured tasks against standards or previous measurements or other staff member performance. The level of skill in the training field of endeavor is such that

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one of ordinary skill, taking Doyle as a whole, would have used the implemented the step of comparing measured data against a standard or threshold, in order to identify training needs as mentioned on p.64, for example.

Regarding claim 3, call center tasks inherently include a repetitive operation – e.g., for customer service agents: receiving a call, using manual tools, electronic tools, or human experts to find an answer, and giving the answer to the caller.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (article, Calling all trainers) in view of Batt (article, Work organization, technology, and performance in customer service and sales).

Regarding claim 4, Doyle includes a process wherein the agent uses screens to perform tasks (e.g., p.65, last paragraph). Doyle is silent as to the particular unit of performance measure (time: minute, second, hour; cost: dollar, cent; speed: calls per day; etc.). Instead, Doyle mentions the type of unit performance, i.e., quality. Doyle does teach, however, that the only way to know whether staff is performing as needed is to "measure everything."

Batt teaches measuring time for task performance as a basis of monitoring performance.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to measure time (as part of measuring everything) for the task of navigating computer screens. Such a measurement could be used for measurement of staff efficiency performance as well as equipment performance.

Regarding claim 5, the Doyle and Batt combination meets the claims because Doyle refers to agents using scripts and technical support using troubleshooting scripts.

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8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (article, Calling all trainers) in view of Batt (article, Work organization, technology, and performance in customer service and sales) and further in view of Walker et al (US-6567787).

Regarding claim 6, taking Doyle as a whole, measurement of “everything” is taught as a tool to aid monitoring of employees.

Walker teaches monitoring verbal messages related to sales. Walker is in the field of sales agent monitoring, and teaches a process that includes detecting whether a sales agent has properly spoken a prompt that appears on a screen. Monitoring an agent’s recitation of scripted information would have been important to a company in order to ensure that the caller is receiving correct and consistent information as dictated by the agent’s company.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Doyle and Batt combination to include monitoring of verbal script performance tasks by an agent, such as suggested by Walker, in order to ensure that the correct information is given to callers.

Further, applying the principles of *In re Venner*, 120 USPQ 192, it is not invention to automate a manual or human-based activity. In this claim, a supervisor’s call monitoring duty is automated.

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9. Claims 7-13 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (article, Calling all trainers).

Regarding claims 7-13, the particular aspect of sales agent task performance that is monitored or measured is dependent upon the company goal, business plan, and competition.

The examiner takes Official notice of each of the following:

sales per unit (claim 7) and time for entry of information (claim 12) are common ways of determining effectiveness and productivity of sales and collections agents, respectively,

errors per unit sale (claim 8) and errors per entered bill (claim 13) are common quality determinations for sales and collections,

average call handling time (claim 9) is a common efficiency determination,

comparing sales agents to each other (claim 10) is a common benchmarking initiative,

and

bill payment information entries (claim 11) are common tasks related to collections agent duties.

Therefore, it would have been an obvious matter of design choice within the level of ordinary skill in the business art at the time the invention was made to measure the business in the manner set forth in claims 7-13, in order to assess the company goals, business plan compliance, and market standing based on competition.

The features of claim 42 are providing performance standards, measuring performance against those standards, and scheduling training when the standards are not met. The examiner

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takes Official notice that it is well known in business to make appointments generally, and in the human resources field to schedule training. For example, if an employee were to begin work at a company on a particular day, it would be inherent in the hiring process that human resources would schedule the new hire training with the employee. Moreover, the need for instructors and/or training materials would also impact the scheduling step.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Doyle to include the step of scheduling training because the agent would have to be available to attend training whether a new hire or a current employee needing refresher or new application training.

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10. Claims 14-16, 20-30, and 34-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaio (US-5299260) in view of Doyle (article, Calling all trainers).

Regarding claims 14-16 Shaio discloses means for monitoring agent performance including means for measuring (monitoring system, e.g., abstract and detailed description at 3:39-68, in particular 63-66) and means for notifying (3:61-63, agent supervisor station 22 is used to monitor the performance of agents by an agent supervisor).

Doyle discloses the particular agent performance monitoring functionalities recited in claims 14-16 (see the detailed discussion of claims 1-3 above).

Taking the two references as a whole, both are for monitoring agent performance, the distinction between the two is the programming. The level of skill of a computer programmer is such that the algorithm for monitoring employee performance is based on the parameters set by a company and a programmer of ordinary skill would have been able to write instructions for the Shaio processor to accomplish the monitoring objectives. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Shaio to include programming instructions for monitoring the agent in the manner described in Doyle, in order to determine training needs and adequacy of performance.

Further regarding claims 20-26, the particular aspect of sales agent task performance that is monitored or measured is dependent upon the company goal, business plan, and competition. The examiner takes Official notice of each of the following:

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sales per unit (claim 20) and time for entry of information (claim 25) are common ways of determining effectiveness and productivity of sales and collections agents,

respectively,

errors per unit sale (claim 21) and errors per entered bill (claim 26) are common quality determinations for sales and collections,

average call handling time (claim 22) is a common efficiency determination,

comparing sales agents to each other (claim 23) is a common benchmarking initiative,

and

bill payment information entries (claim 24) are common tasks related to collections agent duties.

Therefore, it would have been an obvious matter of design choice within the level of ordinary skill in the business art at the time the invention was made to measure the business in the manner set forth in claims 20-26, in order to assess the company goals, business plan compliance, and market standing based on competition.

Regarding claim 27, Shaio discloses means for monitoring a plurality of agents' performance including means for measuring (monitoring system, e.g., abstract and detailed description at 3:39-68, in particular 63-66) and means for notifying (3:61-63, agent supervisor station 22 is used to monitor the performance of agents by an agent supervisor).

Doyle discloses the particular agent performance monitoring functionalities recited in claims 14-16 (see the detailed discussion of claims 1-3 above).

Taking the two references as a whole, both are for monitoring each agent performance, the distinction between the two is the programming. The level of skill of a computer programmer is such that the algorithm for monitoring employee performance is based on the parameters set by a company and a programmer of ordinary skill would have been able to write instructions for the Shaio processor to accomplish the monitoring objectives. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Shaio to include programming instructions for monitoring the agent in the manner described in Doyle, in order to determine training needs and adequacy of performance.

Further, Shaio discloses ranking agents (10:30-45). Although the ranking of agents in Shaio is for determining their queue position, the queue ranking is suggestive of prioritization in the business field. In particular, the examiner takes Official notice that the prioritization of business goals is within the level of ordinary skill in the business field. Further, such prioritization is dependent on many factors within a company. To suggest that the first agent available is the first agent in a queue is suggestive of a poorest performing agent receiving appropriate attention from the supervisor or others in order to improve performance. Therefore, it would have been obvious to one of ordinary skill in the art to modify the Shaio and Doyle combination to include ranking the agents based on performance.

Regarding claims 28-30 Shaio discloses means for monitoring agent performance including means for measuring (monitoring system, e.g., abstract and detailed description at 3:39-68, in particular 63-66) and means for notifying (3:61-63, agent supervisor station 22 is

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used to monitor the performance of agents by an agent supervisor). The means for monitoring inherently includes a processor because a processor is the functional unit of a computer that interprets and executes programming instructions. Basically, without a processor, the computer will not operate.

Doyle discloses the particular agent performance monitoring functionalities recited in claims 41 (see the detailed discussion of claims 1-3 above).

Taking the two references as a whole, both are for monitoring agent performance, the distinction between the two is the programming. The level of skill of a computer programmer is such that the algorithm for monitoring employee performance is based on the parameters set by a company and a programmer of ordinary skill would have been able to write instructions for the Shaio processor to accomplish the monitoring objectives. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Shaio to include programming instructions for monitoring the agent in the manner described in Doyle, in order to determine training needs and adequacy of performance.

Further regarding claims 34-40, the particular aspect of sales agent task performance that is monitored or measured is dependent upon the company goal, business plan, and competition.

The examiner takes Official notice of each of the following:

sales per unit (claim 34) and time for entry of information (claim 39) are common ways of determining effectiveness and productivity of sales and collections agents, respectively,

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errors per unit sale (claim 35) and errors per entered bill (claim 40) are common quality determinations for sales and collections, average call handling time (claim 36) is a common efficiency determination, comparing sales agents to each other (claim 37) is a common benchmarking initiative, and bill payment information entries (claim 38) are common tasks related to collections agent duties.

Therefore, it would have been an obvious matter of design choice within the level of ordinary skill in the business art at the time the invention was made to measure the business in the manner set forth in claims 34-40, in order to assess the company goals, business plan compliance, and market standing based on competition.

Regarding claim 41 Shaio discloses means for monitoring agent performance including means for measuring (monitoring system, e.g., abstract and detailed description at 3:39-68, in particular 63-66) and means for notifying (3:61-63, agent supervisor station 22 is used to monitor the performance of agents by an agent supervisor). The means for monitoring inherently includes a processor because a processor is the functional unit of a computer that interprets and executes programming instructions. Basically, without a processor, the computer will not operate.

Doyle discloses the particular agent performance monitoring functionalities recited in claim 41 (see the detailed discussion of claims 1-3 above).

Taking the two references as a whole, both are for monitoring agent performance, the distinction between the two is the programming. The level of skill of a computer programmer is such that the algorithm for monitoring employee performance is based on the parameters set by a company and a programmer of ordinary skill would have been able to write instructions for the Shaio processor to accomplish the monitoring objectives. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Shaio to include programming instructions for monitoring the agent in the manner described in Doyle, in order to determine training needs and adequacy of performance.

Further, Shaio discloses ranking agents (10:30-45). Although the ranking of agents in Shaio is for determining their queue position, the queue ranking is suggestive of prioritization in the business field. In particular, the examiner takes Official notice that the prioritization of business goals is within the level of ordinary skill in the business field. Further, such prioritization is dependent on many factors within a company. To suggest that the first agent available is the first agent in a queue is suggestive of a poorest performing agent receiving appropriate attention from the supervisor or others in order to improve performance. Therefore, it would have been obvious to one of ordinary skill in the art to modify the Shaio and Doyle combination to include ranking the agents based on performance.

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11. Claims 17-18 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaio (US-5299260) in view of Doyle (article, Calling all trainers) as applied to claims 15 and 29, respectively, and further in view of Batt (article, Work organization, technology, and performance in customer service and sales).

Regarding claims 17 and 31, Doyle includes a process wherein the agent uses screens to perform tasks (e.g., p.65, last paragraph). Doyle is silent as to the particular unit of performance measure (time: minute, second, hour; cost: dollar, cent; speed: calls per day; etc.). Instead, Doyle mentions the type of unit performance, i.e., quality. Doyle does teach, however, that the only way to know whether staff is performing as needed is to “measure everything.”

Batt teaches measuring time for task performance as a basis of monitoring performance.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to measure time (as part of measuring everything) for the task of navigating computer screens. Such a measurement could be used for measurement of staff efficiency performance as well as equipment performance.

Regarding claims 18 and 32, the Doyle and Batt combination meets the claims because Doyle refers to agents using scripts and technical support using troubleshooting scripts.

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12. Claims 19 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaio (US-5299260), Doyle (article, Calling all trainers), and Batt (article, Work organization, technology, and performance in customer service and sales) as applied to claims 18 and 32, respectively, and further in view of Walker et al (US-6567787).

Regarding claims 19 and 33, taking Doyle as a whole, measurement of “everything” is taught as a tool to aid monitoring of employees.

Walker teaches monitoring verbal messages related to sales. The Walker is in the field of sales agent monitoring, and teaches a process that includes detecting whether a sales agent has properly spoken a prompt that appears on a screen. Monitoring an agent’s recitation of scripted information would have been important to a company in order to ensure that the caller is receiving correct and consistent information as dictated by the agent’s company.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Shaio, Doyle, and Batt combination to include monitoring of verbal script performance tasks by an agent, such as suggested by Walker, in order to ensure that the correct information is given to callers.

Further, applying the principles of *In re Venner*, 120 USPQ 192, it is not invention to automate a manual or human-based activity. In this claim, a supervisor’s call monitoring duty is automated.

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Conclusion

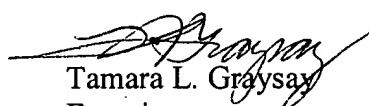
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Berkson (US-6049779) teaches the use of performance-based incentives, i.e., if performance standards are met then an incentive is awarded to the telemarketer.
- Brooks (US-6011792) teaches a call center staffed with telemarketers trained in different skills and having varied skill levels.
- Maloney (US-5535256) teaches reporting staff performance information to a supervisor and three explicit reasons for monitoring staff including: provide training.
- Jilk (US-6938048) teaches training workers automatically based on performance.
- Brown (US-5164983) teaches a performance management system for telemarketing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (571) 272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tamara L. Graysay
Examiner
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